



**FEDERAL ELECTION COMMISSION**

Washington, DC 20463

**MEMORANDUM**

**TO:** Office of the Commission Secretary

**FROM:** Office of General Counsel

**DATE:** February 29, 2000

**SUBJECT:** Audit Referral 99-16-First General Counsel's Report

The attached is submitted as an Agenda document for the Commission Meeting of \_\_\_\_\_

Open Session \_\_\_\_\_

Closed Session \_\_\_\_\_

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LITIGATION ☐

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**FEDERAL ELECTION COMMISSION**

999 E Street N.W.  
Washington, D.C. 20463

2000 FEB 29 P 1:22

**FIRST GENERAL COUNSEL'S REPORT**

**SENSITIVE**

Audit Referral: 99-16

Audit Referral Date: June 11, 1999

Date Activated: October 6, 1999

Expiration of Statute of Limitations: July 26, 2000<sup>1</sup>

Staff Member: Delanie DeWitt Painter

**SOURCE:**

AUDIT REFERRAL

**RESPONDENTS:**

Dole for President Committee and  
Robert J. Dole, as treasurer

Dole/Kemp '96, Inc. and  
Robert J. Dole, as treasurer

US Airways, Inc.

**RELEVANT STATUTES  
AND REGULATIONS:**

2 U.S.C. § 441b(a)  
2 U.S.C. § 441b(b)(2)  
26 U.S.C. § 9003(b)  
2 U.S.C. § 9002(11)  
11 C.F.R. § 114.1(a)(1)  
11 C.F.R. § 114.2(b)  
11 C.F.R. § 116.1(c)  
11 C.F.R. § 116.2(e)  
11 C.F.R. § 116.3(a)  
11 C.F.R. § 116.3(b)  
11 C.F.R. § 116.3(c)  
11 C.F.R. § 116.3(d)  
11 C.F.R. § 9003.2(a)(2)  
11 C.F.R. § 9007.1  
14 C.F.R. § 374a.4

**INTERNAL REPORTS CHECKED: Audit Documents; Disclosure Reports**

<sup>1</sup> This is the earliest date that the statute of limitations would expire for the activity in AR 99-16 based on the date of the letter approving the Primary Committee's application for an Air Travel Card. Attachment 2 at 198. Extensions of credit on the account for air travel continued throughout the primary and general election periods. As of the date of this Report, the General Committee continues to have an unpaid balance remaining on the account. See *infra* p. 5 regarding the amount of debt at issue.

**FEDERAL AGENCIES CHECKED: Department of Transportation**

**I. GENERATION OF MATTER**

Audit Referral # 99-16 was generated by an audit of Dole/Kemp '96, Inc. (the "General Committee") and the Dole/Kemp '96 Compliance Committee, Inc., undertaken in accordance with 26 U.S.C. § 9007 and 11 C.F.R. § 9007.1. This matter also involves the Dole for President Committee (the "Primary Committee") (collectively, "the Committees"). The Commission approved the audit reports on the Committees on June 3, 1999. During its consideration of the General Committee audit report, the Commission voted to receive, without making any determination on the merits of the Audit staff's analysis of the facts or interpretation of the law, a finding that US Airways, Inc. extended credit to the General Committee outside the ordinary course of business and that the General Committee therefore received an apparent prohibited contribution from US Airways, Inc. See Attachment 1 at 1, 6. In a memorandum dated June 11, 1999, the Audit Division referred this matter to the Office of General Counsel pursuant to 11 C.F.R. § 9007(c)(2). The Audit Division's referral materials are attached.<sup>2</sup> Attachment 1. The current treasurer of both Committees is Senator Robert J. Dole.<sup>3</sup>

**II. FACTUAL AND LEGAL ANALYSIS**

**A. LAW**

The Federal Election Campaign Act of 1971, as amended, 2 U.S.C. §§ 431-455 ("the Act") prohibits corporations from making contributions in connection with a federal election. 2 U.S.C. § 441b(a); see 11 C.F.R. § 114.2(b). No candidate, political committee or other person

<sup>2</sup> On September 22, 1999, the Commission voted to sever this issue from Audit Referral #99-09.

<sup>3</sup> The former treasurer was Robert E. Lighthizer. On December 4, 1998, the Committees submitted a letter from Mr. Lighthizer resigning his position as treasurer. Commission records indicate that this was an amendment to the Statement of Organization, and that the current treasurer is Senator Dole.

shall knowingly accept or receive a prohibited contribution.<sup>4</sup> *Id.* A prohibited contribution includes "any direct or indirect payment, distribution, loan, advance, deposit, gift of money, or any services or anything of value." 2 U.S.C. § 441b(b)(2); 11 C.F.R. § 114.1(a).

In contrast, a corporation in its capacity as commercial vendor<sup>5</sup> "may extend credit to a candidate, a political committee or another person on behalf of a candidate or political committee provided that the credit is extended in the ordinary course of the corporation's business and the terms are substantially similar to extensions of credit to nonpolitical debtors that are of similar risk and size of obligation."<sup>6</sup> 11 C.F.R. § 116.3(b). To determine if credit was extended in the ordinary course of the vendor's business, the Commission will consider (1) whether the commercial vendor followed its established procedures and its past practice in approving the extension of credit; (2) whether the commercial vendor received prompt payment in full if it previously extended credit to the same candidate or political committee; and (3) whether the extension of credit conformed to the usual and normal practice in the commercial vendor's trade or industry. 11 C.F.R. § 116.3(c). Moreover, the Commission may rely on the regulations of other federal agencies to determine whether an entity regulated by those agencies extended credit in the ordinary course of business. 11 C.F.R. § 116.3(d).

<sup>4</sup> Publicly-funded general election candidates must sign a written agreement certifying, *inter alia*, that they will not accept any contributions to defray qualified campaign expenses. See 26 U.S.C. §§ 9003(b)(2); 9002(11); 11 C.F.R. §§ 9003.2(a)(2); 9002.11.

<sup>5</sup> A commercial vendor is defined as "any persons providing goods or services to a candidate or political committee whose usual and normal business involves the sale, rental, lease or provision of those goods or services." 11 C.F.R. § 116.1(c).

<sup>6</sup> Extension of credit may include, but is not limited to, the following transactions: (1) any agreement between the creditor and political committee that the full payment is not due until after the creditor provides goods or services to the political committee; (2) any agreement between the creditor and the political committee that the political committee will have additional time to pay the creditor beyond the previously agreed to due date; and (3) the failure of the political committee to make full payment to the creditor by a previously agreed to due date. 11 C.F.R. § 116.2(e).

The Department of Transportation ("DOT") regulations govern the extension of unsecured credit by air carriers to candidates for federal office or persons acting on their behalf in connection with a campaign for federal office. 14 C.F.R. § 374a.4 (1999). Absent adequate security or full payment in advance, no air carrier may provide transportation to "any person it knows, or has reasons to know, is a candidate or a person acting on behalf of such candidate, in connection with the campaign of such candidate, except in accordance with, and subject to" certain conditions. 14 C.F.R. § 374a.4(a). One of these conditions is that "[a]t least once a month the air carrier shall submit to each such candidate or person a statement covering all unsecured credit extended to such candidate or person," whether in connection with the candidate's campaign or otherwise. 14 C.F.R. § 374a.4(a)(1). These statements shall be mailed no later than the second business day following the last day of the billing period covered by the statement. 14 C.F.R. § 374a.4(a)(2). The DOT's regulations further provide that the amount of indebtedness shown on each statement shall be payable in full no later than 25 days after the last day of the billing period, after which time the indebtedness shall be overdue. 14 C.F.R. § 374a.4(a)(3). Moreover, unsecured credit shall not be extended by an air carrier to a candidate, or to any person acting on behalf of a candidate so long as any overdue indebtedness of such candidate remains unpaid, in whole or in part, or so long as the air carrier shall know that any overdue indebtedness of such candidate to any other air carrier remains unpaid, in whole or in part. 14 C.F.R. § 374a.4(a)(4)(i).

## **B. FACTUAL AND PROCEDURAL BACKGROUND**

US Airways, Inc.<sup>7</sup> approved an application submitted by the Primary Committee for a Universal Air Travel Plan Account, including an Air Travel Card, in July 1995. See Attachment 2

<sup>7</sup> US Airways, Inc. is incorporated in the state of Delaware.

at 185-198. It appears that both Committees used the Air Travel Card to obtain travel services on US Airways, Inc. and other air carriers throughout the candidate's primary and general campaigns. Although it appears that invoices were paid promptly until the general election, after that date the General Committee did not pay the outstanding balance on the account in full. The General Committee's April Quarterly Report, filed on April 15, 1999, itemized a debt owed to "US AIR" in the amount of \$269,231.31.<sup>8</sup> Monthly reports submitted by US Airways, Inc. to the DOT reflect an outstanding balance as high as \$920,428 on February 26, 1997, which was reduced to \$303,506.27 as of December 3, 1999. According to US Airways, Inc. representatives, the amount outstanding as of November 18, 1999 was \$303,506, including late fees, and late fees continue to accrue at the rate of 1% a month. While it appears that the General Committee has made payments on the account, the account continues to be past due.

During audit fieldwork, the Audit staff identified a General Committee debt owed to US Airways, Inc. related to the Air Travel Card account. The auditors' review revealed that the General Committee paid invoices from US Airways, Inc. for September and early October, 1996 in full. Attachment 1 at 4. However, an invoice dated October 31, 1996 indicated an outstanding balance of \$561,439, which increased to \$1,066,217 in the following invoice dated December 4, 1996. *Id.* The Audit staff found no additional billings after December 4, 1996, and concluded that the travel account was inactive after the election. *Id.* at 5. The Audit staff identified General

<sup>8</sup> The General Committee's subsequent reports, filed on July 15, 1999 and October 15, 1999, only include the summary page and do not itemize any debts. The total amount of debts listed in the April 15, 1999 report, \$921,177.07, is the same amount of debts reported in the July 15, 1999 report. The October 15, 1999 report does not list any amount for debts and obligations; however, it also does not reflect any disbursements. On December 7, 1999, the Reports Analysis Division sent RFAI letters to the General Committee concerning the July and October Quarterly Reports.

Committee payments to US Airways, Inc. from December 12, 1996 through September 30, 1998 that reduced the outstanding balance to \$272,037.<sup>9</sup> Attachment 1 at 5.

The Audit staff questioned whether the extension of credit was in the ordinary course of business because there was no evidence that US Airways, Inc. sent invoices or made attempts to collect the debt after December 1996, or that the debt was secured. *Id.* In the Exit Conference Memorandum ("ECM"), the Audit Division concluded that the General Committee received an apparent prohibited contribution from US Airways, Inc. in the amount of \$1,066,217 as of December 4, 1996, and that \$325,409 remained outstanding as of February 28, 1999. Attachment 1 at 6. The Audit staff recommended that the General Committee provide documentation to support its assertion that the extension of credit was in the ordinary course of business, including examples of other US Airways, Inc. customers or clients of similar size and risk who enjoyed similar credit arrangements and services, as well as the billing, advance payment and debt collection policies for similar clients.

On July 28, 1998, the General Committee responded to the ECM that US Airways, Inc. did not arrange "favorable terms or payment schedules" and that its dealings with the Committee were "completely at arms-length."<sup>10</sup> Attachment 3 at 3. The General Committee explained that a

<sup>9</sup> The auditors also state that their calculations of the amounts owed "materially agree" with information reported by US Airways, Inc. to the DOT, although the amounts are not exactly the same. See Attachment 1 at 5. It appears that the differences in the figures may be due to the timing of the reports to the DOT and to late fees apparently added to the outstanding balance by US Airways, Inc. beginning in March 1997. The General Committee's 1997 Year End report disclosed a debt to US Airways, Inc. of only \$127,205; however, the General Committee explained to the auditors that the difference related to amounts that were to be paid by the Republican National Committee ("RNC") as coordinated expenditures in accordance with 2 U.S.C. § 441a(d). Attachment 1 at 5, see Attachment 3 at 2-3. On July 28, 1998, the General Committee responded to the Exit Conference Memorandum and stated that since no RNC payments had been made "from coordinated funds on behalf of the campaign for more than a year . . . [the General Committee] added these invoices back to its reported totals of outstanding balances, and has filed amended Debts and Obligations schedules to reflect the total balance owed." Attachment 3 at 2-3.

<sup>10</sup> At the end of audit fieldwork, the General Committee submitted a statement from Allen Haywood, its Comptroller, dated April 3, 1998 and a letter from Michael MacNair of MacNair Travel Management dated April

"disinterested outside travel agency, McNair [sic] Travel, negotiated with US Airways on behalf of the General Committee. *Id.* Moreover, the General Committee stated that US Airways, Inc. representatives contacted the General Committee every three to four weeks concerning payment on the account, and that US Airways, Inc. sent a letter to the General Committee demanding payment in May 1997. *Id.* A copy of this letter was not attached, but the General Committee provided a form letter dated December 4, 1996 from US Airways, Inc. requesting payment and notifying customers that late charges would be assessed on outstanding balances after January 1, 1997. Attachment 5. The Audit staff was not able to ascertain whether the General Committee's outstanding balance reflected any late charges."<sup>11</sup> Attachment 1 at 6.

In the Audit Report, the Audit staff concluded that the General Committee failed to provide documentation demonstrating that US Airways, Inc. did not extend credit outside its ordinary course of business, as defined at 11 C.F.R. § 116.3. *Id.* Specifically, the General Committee did not provide documentation of other US Airways, Inc. customers of similar size and risk for whom similar services and credit were extended; US Airways, Inc.'s policies for billing, advance payment and debt collection; or documentation of efforts to collect the debt. See 11 C.F.R. §§ 116.3(b) and (c). The auditors also noted that no documentation was provided to indicate that US Airways, Inc. was in compliance with the DOT regulations at 14 C.F.R. § 374a.4. Attachment 1 at 6; see 11 C.F.R. § 116.3(d).

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1, 1998. Attachment 4. Mr. MacNair states that more than 80% of companies and associations use some form of billing system like the Air Travel Card, and the extension of credit was "typical of arrangements with our other clients and is standard in the industry." *Id.* at 3. In addition he states that "as part of our plan to set up a travel program for the campaign, we suggested the Air Travel Card." *Id.*

<sup>11</sup> The Audit staff noted that the increases in account balances reported by US Airways, Inc. to the DOT in December 1998 may have indicated the assessment of an interest charge. Attachment 1 at 6.



Representatives of US Airways, Inc., including its Executive Vice President for Corporate Affairs and its General Counsel, met with staff of this Office on July 23, 1999. See Attachment 2 at 1. US Airways, Inc. subsequently provided additional information and documentation to support its contention that the extension of credit to the General Committee was in the ordinary course of business.<sup>12</sup> *Id.* Specifically, US Airways, Inc. furnished the following records: information regarding its Air Travel Card program (Attachment 2 at 5-19); invoices dated October 31, 1996 through October 7, 1998 demanding payment (*Id.* at 20-94); a memorandum dated August 11, 1998 from its Manager of Credit and Collections to the General Committee's assistant treasurer, also demanding payment (*Id.* at 95); a log of telephone contacts between US Airways, Inc. collectors and the General Committee concerning the delinquent account (*Id.* at 124-186); a copy of a letter addressed to Senator Dole from US Airways, Inc.'s Manager of Commercial Credit and Collections dated May 26, 1997 (*Id.* at 187); copies of letters and attached invoices sent to the General Committee between November 3, 1998 and July 15, 1999 by an outside counsel retained by US Airways, Inc. to collect the debt (*Id.* at 96-123); copies of the Primary Committee's application for an Air Travel Card account and related documents (*Id.* at 188-199); examples of applications and account histories belonging to Air Travel Card customers of similar size and risk, including copies of applications and account records for not-for-profit and

<sup>12</sup> Counsel on behalf of US Airways, Inc. requested that the letter and attachments remain "confidential and therefore exempt from disclosure to the public under the Freedom of Information Act ["FOIA"], 5 U.S.C. § 552(b)(4) and 11 C.F.R. § 4.5." Attachment 2 at 4. In a letter to the Commission's FOIA Officer dated August 19, 1999, counsel reiterated the request that the documentation be considered exempt and included a certification pursuant to 11 C.F.R. § 4.5(a)(4)(ii). This Office agrees that the documentation provided by US Airways, Inc. includes confidential financial information such as information about other customers and internal credit and collection policies that justifies an exemption, and has so advised the FOIA Officer. See 11 C.F.R. § 4.5(4). While the procedures at 11 C.F.R. § 4.5(a)(4)(i) through (v) are not applicable at this stage because open enforcement matters under 2 U.S.C. § 437g are confidential by statute, US Airways, Inc. also seeks confidential treatment of these documents following termination of the matter. See 2 U.S.C. § 437g(a)(12); 11 C.F.R. § 4.5(a)(4)(vi).

government entities (*Id.* at 200-263); a summary of US Airways, Inc.'s Credit Policy dated July 1, 1998 (*Id.* at 264-267); and examples of efforts to obtain payment from other customers with overdue accounts (*Id.* at 268-355).

On November 19, 1999, representatives of US Airways, Inc. met again with staff of this Office. In response to questions about the initial extension of credit and calculation of the late fee, counsel for US Airways, Inc. provided documents at the meeting. Attachment 6. In a letter dated December 1, 1999 counsel provided additional documents. Attachment 7. The following additional records were provided at the November 19, 1999 meeting or were attached to the December 1, 1999 letter: an affidavit from US Airways, Inc.'s Manager for Credit and Collections

pages from the 1994 Credit

Manual concerning credit approval policies for Air Travel Card accounts                      examples of  
Air Travel Card applications that were approved

a page of contemporaneous system documentation concerning name and  
address changes for card holders                      and a second copy of the July 1, 1998  
Credit Policy

### C. ANALYSIS

This Office recommends that the Commission find no reason to believe that US Airways, Inc., the Primary Committee or the General Committee violated 2 U.S.C. § 441b(a). Based on the documentation provided by US Airways, Inc., it appears that the extension of credit was in the ordinary course of business. See 11 C.F.R. § 116.3. US Airways, Inc. has provided sufficient information concerning its credit policies and extensions of credit to other customers to support

its contention that the initial extension of credit was in the ordinary course of business.

Moreover, it has provided substantial documentation of its efforts to collect the debt. See 11 C.F.R. §§ 116.3(b) and (c).

It appears that the initial extension of credit to the Primary Committee was in the ordinary course of business.<sup>13</sup> See 11 C.F.R. § 116.3. US Airways, Inc. explained that the Primary Committee "completed the standard application form, submitted the information required by US Airways, and was approved for the Card through the standard process and under standard criteria." Attachment 2 at 2. On July 10, 1995, Michael MacNair of MacNair Travel sent the Primary Committee's application for an Air Travel Card to Frank Nicholson, US Airways, Inc.'s Manager of Credit Collections. Attachment 2 at 185-197. Mr. MacNair's letter states that a financial statement, credit information and vendor references were included, and "the funds are really coming in (about \$100,000 per day!)." *Id.* at 185. Mr. MacNair asks that Mr. Nicholson consider factors such as the fact that "[w]in lose or draw," the candidate was the "majority leader" who could "raise money at will right up to and after the election," that it is not in the candidate's interest to "leave anyone hanging" especially a "Washington area organization like yourselves," and that the campaign had set up a "preferred relationship" and discount with US Airways, Inc. that would "move marketshare overwhelmingly to your carrier." *Id.* The attached application includes the Primary Committee's address, two bank and four vendor references, the Primary Committee's April 15, 1995 Quarterly Report, disclosing \$2,495,616 in cash on hand, a Dun & Bradstreet analysis of the Primary Committee and the completed application. Attachment

<sup>13</sup> It appears that the initial extension of credit in July 1995 was to the Primary Committee. According to US Airways, Inc. representatives, both Committees used the same account.

2 at 185-197. A letter dated July 26, 1995 informed the Primary Committee that its "application for a Universal Air Travel Plan Account" had been approved. Attachment 2 at 198.

US Airways, Inc. explained that the Primary Committee's application was approved based on the following factors:

US Airways, Inc. also provided information to clarify questions concerning its policy for approving Air Travel Card applications.

Moreover, US Airways, Inc. has provided substantial documentation that it made consistent and energetic efforts to obtain payment from the General Committee and that its collection efforts were similar to its treatment of non-political debtors. See 11 C.F.R. §§ 116.3(b) and (c). It appears that US Airways, Inc. generally complied with the DOT regulations at 14 C.F.R. § 374a.4.<sup>15</sup> See 11 C.F.R. § 116.3(d). The invoices provided by US Airways, Inc. indicate that it consistently sent a statement of amounts due to the General Committee every month from October 31, 1996 through October 7, 1998. Attachment 2 at 20-94; see 14 C.F.R. § 374a.4(a)(1). It appears that the matter was turned over to a law firm for collection in October 1998, and the law firm sent letters and invoices every month between November 3, 1998 and July 15, 1999. Attachment 2 at 96-123. It appears that the General Committee's account was closed

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<sup>15</sup> However, while US Airways, Inc. sent the General Committee monthly invoices, it is not clear whether all of them were mailed within two business days following the last day of the billing period covered by the statement. See 14 C.F.R. § 374a.4(a)(2).

on November 22, 1996; thus, no unsecured credit was extended after the General Committee's account became overdue. *Id.* at 2; see 14 C.F.R. § 374a.4(a)(4)(i).

In addition, it appears that US Airways, Inc. attempted to collect the debt by frequent telephone contacts, sending letters to the General Committee and the candidate, contacting the General Committee's travel agent and imposing a late fee on the outstanding balance beginning in March 1997. A memorandum to the General Committee dated August 11, 1998, states that US Airways, Inc. "will turn this account over to a collection agency, and ultimately, to outside counsel" if the General Committee did not immediately start to make "substantial" regular payments, and threatened to take "decisive action to remedy the situation."

US Airways, Inc. asserts that its general collections policy is to

Finally, US Airways, Inc. provided documentation of its collection efforts for several other accounts that had problems such as episodic underpayments, frequent missed payments, delayed payments, outstanding balances, and chronic slow payment. *Id.* at 268-355. These documents support US Airways, Inc.'s contention that its efforts to collect the outstanding debt from the General Committee were similar to its collection efforts for other customers. 11 C.F.R. § 116.3(b).

Therefore, the Office of General Counsel recommends that the Commission find no reason to believe that the Primary Committee, General Committee or US Airways, Inc. violated 2 U.S.C. § 441b(a).

### **III. RECOMMENDATIONS**

1. Open a Matter Under Review;

2. Find no reason to believe that Dole for President and Robert J. Dole, as treasurer violated 2 U.S.C. § 441b(a);
3. Find no reason to believe that Dole/Kemp '96, Inc. and Robert J. Dole, as treasurer violated 2 U.S.C. § 441b(a);
4. Find no reason to believe that US Airways, Inc. violated 2 U.S.C. § 441b(a);
5. Approve the appropriate letters; and
6. Close the file.

2/28/02  
Date

  
Lawrence M. Noble  
General Counsel

#### Attachments

1. Memorandum from Robert J. Costa to Lawrence M. Noble "Referrals from the Audit of Dole/Kemp '96, Inc. and Dole/Kemp '96 Compliance Committee, Inc." dated June 11, 1999 (relevant portions).
2. Letter from Donald T. Bliss, O'Melveny & Myers LLP, to Kim Bright-Coleman, Associate General Counsel, *Requested Materials Regarding US Airways, Inc.*, dated July 26, 1999, and attachments.
3. "Response of the Dole/Kemp Committee and the Dole/Kemp Compliance Committee, Inc. to the Exit Conference Memorandum of the Audit Division of the Federal Election Commission," dated July 28, 1998 (relevant portions, without attachments).
4. Statement by Allen Haywood dated April 3, 1998 with attached letter from Michael MacNair dated April 1, 1998.
5. Letter from Frank Nicholson Jr. to "Our Valued Customers," dated December 4, 1996
6. Documents provided by US Airways, Inc. representatives at November 19, 1999 meeting.
7. Letter from Donald T. Bliss, O'Melveny & Myers LLP, to Delanie Painter dated December 1, 1999, and attachments.



7-28-98 ~~16~~

**Response of The Dole/Kemp Committee, Inc. and The Dole/Kemp Compliance  
Committee, Inc. to the Exit Conference Memorandum of the Audit Division of  
the Federal Election Commission**

## **I. Introduction**

On May 13, 1997, the Audit Staff ("Audit Staff") of the Federal Election Commission ("FEC" or "Commission") issued their Exit Conference Memorandum ("ECM") for the Dole/Kemp Committee, Inc. ("Dole/Kemp") and the Dole/Kemp Compliance Committee ("Compliance Committee" or "GELAC") (collectively "the Committees"). The ECM contains the Audit Staff's findings and recommendations following their review of the Committees' records from the 1996 general presidential election. The following contains the Committees' responses to those findings and recommendations. Each of the Audit Staff's findings and recommendations are addressed separately with relevant documents attached.

## **II. The Committees' Responses to the Audit Staff's Non-Repayment Findings**

### **A. Apparent Prohibited Contributions**

#### **1. Prohibited Contribution Resulting From an Extension of Credit by US Airways**

##### **Audit Staff Findings and Recommendations**

The Audit Staff found that USAirways made an in-kind contribution to Dole/Kemp of \$325,409 because the debt owed by Dole/Kemp to USAirways is not in the normal course of business. 11 C.F.R 116.3.

The Audit Staff recommends that Dole/Kemp provide documentation demonstrating that the extension of credit was in the usual course of business.

##### **Dole/Kemp Response**

As of December 4, 1996, Dole/Kemp had a balance outstanding with USAirways of \$1,066,217. As of the end of 1997, the reported balance was \$127,205. The Audit staff determined the correct amount to be \$340,781. The difference between these amounts is accounted for by bills Dole/Kemp removed from its books to submit to the RNC for payment from coordinated funds. No payments have been issued from coordinated funds on behalf of the campaign for more than a year, so Dole/Kemp has added these invoices back to its reported totals

of outstanding balances, and has filed amended Debts and Obligations schedules to reflect the total balance owed. Including payments since the exit conference, the balance has been reduced by an additional \$47,000 from the \$325,409 referenced in the ECM to a current total of \$278,000.

USAirways did not give Dole/Kemp any favorable terms or payment schedules regarding its air transportation services. Dole/Kemp's dealings with USAirways were completely at arms-length. A disinterested outside travel agency, McNair Travel, negotiated with USAirways on behalf of Dole/Kemp. Also, regular payments have been made by Dole/Kemp which have reduced the balance on this account from \$1,066,217 as of December 1996 to the current balance of \$278,000. Dole/Kemp has made payments on this account using vendor refunds, deposits, and funds due to Dole/Kemp from the traveling press and secret service which have been received by Dole/Kemp. Pam Garrett of USAirways calls Allen Haywood every 3-4 weeks for an update on the account, and for information concerning the next expected payment. Frank Nicholson, Jr., the manager of credit and collections for USAirways, sent a letter demanding payment in May of 1997. A copy of an earlier letter from Mr. Nicholson is attached, which indicates that Dole/Kemp was being treated like all other similar customers. See Exhibit 1. Dole/Kemp intends to continue making regular payments to this vendor until this balance is paid in full, with a combination of remaining coordinated funds not yet disbursed and collections on Dole/Kemp receivables. It is difficult to imagine an account handled in a more commercially reasonable fashion in its customary extension of credit and the paydown of the indebtedness. The Audit Staff's assertion to the contrary is unsupported in the law and as a practical matter makes no sense.

3

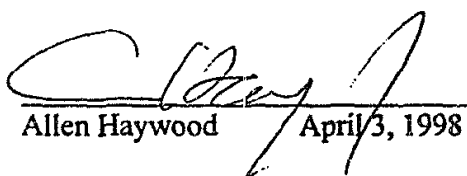
Transactions with U.S. Airways Were At Arms-Length

U.S. Airways did not give the General Committee any favorable terms or payment schedules regarding its air transportation services. The General Committee's dealings with U.S. Airways were completely at arms-length. Indeed, a disinterested outside travel agency, McNair Travel, negotiated with U.S. Airways on behalf of the Committee. Also, U.S. Airways has made repeated demands for the Committee to pay its obligations. As a result, the Committee and U.S. Airways have negotiated a commercially reasonable payment schedule, under which the Committee has already made several payments. See attached statement and the schedule reflecting the Committee's payments.

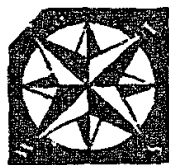
## USAirways Open Balance

A travel account was established during the general election with USAirways by the campaign's travel agent, MacNair Travel. This allowed for the consolidation of ticketing and billing for all air travel by the campaign.

The campaign currently has an open balance with USAirways for air travel during the general election. Regular payments have been made by the campaign to decrease this balance. USAirways representatives have been in regular contact with the campaign in efforts to monitor this situation and to collect on this account. Frank Nicholson, Jr., Manager of credit and collections for USAirways, sent a letter to the campaign demanding payment in May of 1997. Pam Garrett of USAirways has been in regular contact with the campaign comptroller, Allen Haywood, in monitoring the status of this account and seeking payment.

  
Allen Haywood April 3, 1998

4  
2 of 3



# MacNair Travel Management

April 1, 1998

Mr. Alan Hayward  
Comptroller  
Dole Kemp 96  
810 First Street NE, #418  
Washington, DC 20002

Dear Mr. Hayward:

In response to your inquiry regarding the use of the Air Travel Card to process the travel expenditures of the campaign, I offer the following response.

- Over 80% of all U.S. Companies and Associations utilize some form of billing system (Air Travel Card, American Express, Diners Club, etc.) to process travel expenditures. As part of our plan to set up a travel program for the campaign, we suggested the Air Travel Card. The Air Travel Card involves a typical billing arrangement that applies to all clients who have the card.
- Thousands of organizations use the Card. The extension of credit between US Airway's Air Travel Card Division and the Dole campaign is typical of the arrangements with our other clients and is standard in the industry.

Please let me know if you have any additional questions.

Sincerely,

  
Michael MacNair  
President



December 4, 1996

Travel Company, Parkersburg  
West Virginia, NC 27050

To Our Valued Customers:

Thank you for using your Air Travel Card. We appreciate your business and thank you for choosing USAir.

A few months ago we sent a reminder notice of the terms of the Air Travel Card agreement. In this notice, we requested that all our customers pay within the net 30 day terms. Also to help us accurately apply payments we requested that you identify disputed tickets in writing if you are excluding them from payment and list the reason on the back of our remittance slip. Customer compliance with this request has enabled us to better maintain customer accounts. We appreciate your help with this matter.

Effective January 1, 1997, USAir will begin calculating a late payment charge on all balances that are not paid within our terms of net 30 days. With this action it is very important that the above procedures be followed to assure proper account maintenance by our staff.

This will not affect the majority of our customers who pay within our terms. However, those that do not can expect to find a 1% charge on their statements starting in February 1997.

We are happy to assist you in any way or to answer questions concerning your Air Travel Card account. Please feel free to call one of our customer service representatives at 1-800-528-3819

Sincerely,

*Frank Nicholson, Jr.*

Frank Nicholson, Jr.  
Manager, Commercial Credit

ATTACHMENT 5


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FEDERAL ELECTION COMMISSION  
Washington, DC 20463

MEMORANDUM

TO: Lawrence M. Noble  
General Counsel

FROM: Mary W. Dove/Lisa R. Davis  
Acting Commission Secretary 

DATE: March 7, 2000

SUBJECT: Audit Referral #99-16 - First General Counsel's Report  
dated February 28, 2000.

The above-captioned document was circulated to the Commission  
on Wednesday, March 01, 2000.

Objection(s) have been received from the Commissioner(s) as  
indicated by the name(s) checked below:

Commissioner Elliott	—
Commissioner Mason	—
Commissioner McDonald	—
Commissioner Sandstrom	—
Commissioner Thomas	<u>XXX</u>
Commissioner Wold	—

This matter will be placed on the meeting agenda for  
Tuesday, March 14, 2000.

Please notify us who will represent your Division before the Commission on this  
matter.